(1981) 04 MP CK 0005

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Petition No. 111 of 1980

Mahendra Kumar Bhailal Patel	APPELLANT
Vs	
Omprakash and 2 others	RESPONDENT

Date of Decision: April 23, 1981

Acts Referred:

- Madhya Pradesh Cinemas (Regulation) Act, 1952 - Section 3

Citation: (1981) MPLJ 557

Hon'ble Judges: U.N. Bhachawat, J; Chandrapal Singh, J

Bench: Division Bench

Advocate: P.K. Saxena, for the Appellant; G.M. Chaphekar with Pavecha for Respondent No. 1 and A.H. Khan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

U.N. Bhachawat, J.

By this petition under Article 226 of the Constitution of India, the petitioner challenges the order dated 20th September, 1979 (Annexure H) passed by respondent No. 2, the order dated 4-3-1980 (Annexure I) passed by respondent No. 3 and the order dated 3-4-1980 (Annexure J) passed by respondent No. 2 and the grant of licence (Annexure K) dated 7-4-1980.

The petitioner''s father owns a cinema known as ''Mamta Talkies'' in Barwah town of which the petitioner is the Manager within the meaning of the Madhya Pradesh Cinemas (Regulation) Act, 1952 (hereinafter referred to as ''the Act''). This Mamta Talkies is a permanent cinema on licence since 1968 under the Madhya Pradesh Cinemas (Regulation) Rules, 1972 (for short hereinafter referred to as ''the 1972 Rules'').

On 18-4-1975, respondent No. 2 had granted licence for a touring cinema to respondent No. 1. This licence was cancelled on 14-12-1978 vide the order of

respondent No. 2 dated 14-12-1978 (Annexure A). The appeal filed by respondent No. 1 against this order before the State Government was also dismissed on 12th March, 1979 (Annexure B). Thereafter on 7th June, 1979, respondent No. 1 filed an application before respondent No. 2 for grant of ''No Objection Certificate'' for establishing a ''quasi-permanent'' cinema in Barwah town. This application which is exhibited as Annexure C was accompanied by a map showing the location and situation of the proposed ''quasi-permanent'' cinema. On receipt of this application, respondent No. 2 issued a public notice dated 7-6-1979 (Annexure C 2) under Rule 3 of the 1972 Rules inviting objections to the grant of the applied ''No Objection Certificate''. Respondent No. 1 had also issued a notice to that effect which is Annexure C-l. In response to the aforesaid notices the petitioner had submitted his written objections dated 25-6-1979 (Annexure D) objecting the grant of ''No Objection Certificate'' to respondent No. 1, inter alia, on the ground that 1972 Rules did not contemplate establishment of a quasi-permanent cinema and hence neither an application for ''No Objection Certificate'' for establishing a new quasi-permanent cinema was maintainable under Rule 3 nor no ''No objection Certificate'' could be granted. This objection was heard by respondent No. 2 as a preliminary objection and rejected vide his order dated 27-8-1979 (Annexure E). Being aggrieved by this order, the petitioner filed an application dated 3-9-1979 (Annexure F) before the State Government for quashing the order (Annexure E) of respondent No. 2 and allowing the aforesaid preliminary objection. The State Government vide its order dated 23-1-1980 (Annexure G) rejected the application as not tenable and while rejecting the application it was observed that it would consider this objection while considering the recommendation of respondent No. 2 on merits for grant of ''No Objection Certificate''. In the meantime respondent No. 2 after hearing the parties on merits and vide his order dated 20th September, 1979 (Annexure H) while rejecting petitioner''s objection on merits also, recommended to the State Government for grant of ''No Objection Certificate'' to respondent No. 1. The State Government, respondent No. 3 accepted the recommendation; permitted vide Annexure I dated 4-3-1980 respondent No. 2 to grant ''No Objection Certificate'' to respondent No. 1 which has been accordingly granted and thereafter accepting respondent No. 1''s application dated nil (Annexure JA) for grant of licence, the licence dated 7-4-1980 (Annexure K) has been granted for a quasi-permanent cinema. Hence the present petition.

The learned counsel for the petitioner challenging the validity of the ''No objection certificate'' and the licence in question, raised following contentions--

(i) the provisions of the Act and the 1972 Rules do not contemplate establishing quasi-permanent cinemas after the coming into force of these rules; hence neither a ''No Objection Certificate'' nor a licence could be granted to respondent No. 1;

(ii) Rule 3 of the 1972 Rules which is mandatory was not complied with for the reasons that (a) the notice exhibited, at the proposed site of locating the

quasi-permanent cinema was not maintained till the decision by respondent No. 2 in the matter of grant of ''No Objection Certificate'' as required by Rule 3(2); (b) the application for grant of ''No Objection Certificate'' was not in conformity with Rule 3(3) inasmuch as the map accompanying it did not indicate the hospital which existed/exists within a distance of 200 metres of the proposed site;

(iii) the State Government did not give opportunity of oral hearing to the petitioner before accepting the recommendation of respondent No. 2 for grant of ''No Objection Certificate'' and thus the decision of grant of ''No Objection Certificate'' was, rendered in violation of the principles of Natural Justice;

(iv) the State Government without applying its mind to the objections that were raised by the petitioner granted permission for the grant of ''No Objection Certificate'';

(v) the grant of licence is in contravention of Rule 101 as neither the requisite permission for building was obtained nor the application for licence was in conformity with Rule 100 of the 1972 Rules as it did not accompany building permission under Chapter VI.

We proposed to deal ad seriatim with the arguments and counter arguments of the learned counsel for the parties regarding the aforesaid contentions.

Contention No. (i)--

Learned counsel for the petitioner submitted that Rules 3, 4 and 6 of the 1972 Rules provide for locating only two categories of cinemas--one permanent and another touring, no third category. He submitted that Forms A and B of notice under Rules 3 and 4 respectively also have a mention of these two categories only and Form D which is the form for grant of ''No Objection Certificate'' also mentioned those two categories. On these submissions, the learned counsel for the petitioner argued that section 3 of the Act is an imperative provision. It provides that cinematograph cannot be exhibited except in accordance with the licence granted under the Act and as the 1972 Rules made u/s 9 of the Act provides only for two categories of Cinemas, no ''No Objection Certificate'' or licence for the third category, that is, quasi permanent cinema could be granted. The learned counsel submitted that in the 1972 Rules wherever there is a reference of quasi-permanent cinema, it is with regard to such cinemas existing on the date of the coming into force of 1972 Rules, which have been saved under Rule 127 of the 1972 Rules.

Learned counsel for respondent No. 1 combating the argument of the learned counsel for the petitioner submitted that the Rules which were in force prior to the coming into force of the 1972 Rules also did not contain any specific mention of quasi-permanent cinema in the manner it ought to be according to the learned counsel for the petitioner and, therefore, the question of saving this category of cinemas under Rule 127 of the 1972 Rules does not arise. His argument was that

1972 Rules do provide for establishing quasi-permanent cinemas and quasi-permanent cinemas can be established after the coming into force of those Rules. He heavily relied upon the decision, of the Supreme Court in Mohd. Ibrahim Khan and Others Vs. State of Madhya Pradesh and Others, . In the alternative, the learned counsel argued that if the argument of the learned counsel for the petitioner is accepted that 1972 Rules do not apply to quasi-permanent cinemas then the petitioner has no reason to file the present petition. His argument was that to carry on business is the fundamental right of a person under Article 19(g) of the Constitution, of course subject to such reasonable restrictions as may be put under Article 19(6) of the Constitution and if according to the petitioner the 1972 Rules do not apply to quasi-permanent cinemas then there is no requirement for obtaining a ''No Objection Certificate'' and a licence for establishing and running a quasi-permanent cinema house and section 3 of the Act is not attracted inasmuch as section 3 of the Act applies only when provision requiring a licence is made under the Act.

It would be useful to extract the definition of ''cinematograph'' and ''place'' as given in the Act and of ''cinema'' as given in the 1972 Rules, herein-below, before we proceed to interpret section 3 as to whether all the categories of cinemas are covered within the ambit of section 3 of the Act.

Cinematograph-- ''Cinematograph'' includes any apparatus for the representation of moving pictures or series of pictures.

Place--''Place'' includes a house, building, tent and any description of transport, whether by sea, land or air.

Cinema--''Cinema'' means any place wherein an exhibition by means of cinematograph is given.

For the sake of convenience it would be useful to extract hereinbelow section 3 of the Act also.

3. Cinematograph exhibition to be licensed.--

Save as otherwise provided in this Act, no person shall give, an exhibition by means of a cinematograph elsewhere than in a place, licensed under this Act, or otherwise than in compliance with any conditions and restrictions imposed by such licence.

The governing expression in section 3 of the Act is "no person shall give an exhibition by means of a cinematograph elsewhere than in a place, licensed under this Act". Reading this governing expression with the definition of ''cinematograph'', ''place'' and ''cinema'' extracted hereinabove, it can be said without any hesitation that section 3 of the Act imposes a restriction on exhibition by means of a cinematograph in a cinema house. Statutory Rules framed under the Act, constitute a part and parcel of the Act, that when an act is authorised to be done under the Rules framed under the Act, it is also authorised to be done under the Act. In this

view of the matter if the 1972 Rules provide for particular categories of cinema houses, the cinema houses of those categories only can function and not of any other category. In other words section 3 of the Act imposes a restriction that no cinema can function except of the categories prescribed and licensed under the Rules made under the Act. In this view of the matter, we find ourselves unable to accept the argument that in the event we hold that 1972 Rules do not contemplate quasi-permanent cinema, a quasi-permanent cinema can be located and function as such for exhibiting films by means of cinematograph. Now, the question for consideration is whether the 1972 Rules contemplate the establishment of quasi-permanent cinemas or that they do not and provide only for the continuance of the quasi-permanent cinemas which were already existing on the coming into force of these Rules.

With regard to the decision in Mohd. Ibrahimkhan v. The State of M.P. (Supra) it was contended by the learned counsel for the petitioner that it cannot be pressed into service as an authority on the point at hand. He submitted that the only point before the Supreme Court was whether objector should, have been heard by the State Government in an appeal filed under sub-section (3) of section 5 of the Act by a person aggrieved by the order of the Licencing Authority refusing to grant licence. It was argued that an observation on the point which did not fall to be answered cannot be taken as a precedent. It was also argued that law declared by Supreme Court binds Courts in India, but the Supreme Court does not enact so when the 1972 Rules do not provide for establishing a quasi-permanent cinema, therefore, holding of the establishment of a quasi-permanent cinema to be valid on the aforesaid authority of the Supreme Court would mean that Supreme Court enacted a provision therefor.

It cannot be gainsaid that judgments of Supreme Court are decisions between litigants; but declaratory for nation. Therefore, the law declared by the Supreme Court would be binding on the Courts below in view of article 141 of the Constitution. Even an obiter dicta on law point would be binding. It is true that if a particular point was not before the Supreme Court and it did not analyse or examine the relevant provision and did not make even an obiter dicta observation on a point, such a decision cannot be pressed into service as a precedent.

In Mohd. Ibrahim''s case (svpra) undisputedly no question like the one at hand was directly involved. In that case the main question involved was whether an objector is entitled to be heard before grant of a licence and particularly that person who had not filed an objection to the grant of No Objection Certificate''; but in deciding that question, their Lordships, on analysing sections 3, 4, 5, 6 and 7 of the Act, Rules 3, 4, 5, 6, Chapter VII, Rules 100, 101, 102 and 104 in paragraphs 4 and 5 observed as under:

A perusal of the relevant provisions of the Act and the Rules extracted above will show that there are various stages through which an application for a cinema

licence has to be processed. It also transpires that the Rules envisage issuance of a licence for a permanent cinema and quasi-permanent cinema as well as a touring cinema. Cinema in this context has been defined to mean any place wherein an exhibition by means of cinematograph is given.

In paragraph 2 of the Mohd. Ibrahim Khan''s Case (Supra) it is stated--"Third respondent made an application on 5th December, 1975 for grant of a licence for a temporary cinema and the District Magistrate having jurisdiction issued a no-objection certificate vide his order dated 10th February 1972 for a period of six months"--which goes to show that the no-objection certificate was granted after the coming into force of the 1972 Rules.

In the above setting of the facts and observation of Mohd. Ibrahim Khan''s Case (Supra), is an authority on the point that a quasi-permanent cinema can be established after the coming into force of 1972 Rules; we may point out that for the reasons, indicated hereinafter, independently of the Supreme Court authority, we are of the view that the 1972 Rules envisage establishment of a quasi-permanent cinema after their coming into force.

Learned counsel for the petitioner had heavily drawn upon Rules 3, 4 and 5 of the 1972 Rules and Forms A, B, C and D prescribed under these Rules. He submitted that the foundation for the grant of licence is the ''no-objection certificate''. He argued that Rule 3 (2) which provides for an application to the Licensing Authority for no objection certificate requires the applicant to specify therein "whether the application is in respect of a permanent cinema or a touring cinema and the third category quasi-permanent" is not required to be mentioned; which go to show that this third category is not permissible. He submitted that this argument of his got reinforced from the specification to be made with regard to the category of cinema for which no objection certificate is sought in forms A and B of the notices under Rules 3 and 4 respectively--"propose locating of permanent/touring cinema"--and from the further fact that column No. 5, in form C, which is the form prescribed for the report by the Licensing Authority to the State Government under Rule 5, requires "Is the application for a permanent cinema or a touring cinema" though with regard to the information of existing cinemas in column No. 7 one of the categories of cinemas mentioned is "(b)quasi-permanent cinemas". He submitted that mention of category of "quasi-permanent cinema" in the categories of existing cinemas and the omission of this category in the categories of cinemas for which ''no-objection certificate'' is required unequivocally go to show that fresh establishment of the category of quasi-permanent cinema is not envisaged in 1972 Rules and only existing (quasi-permanent cinemas were allowed to be continued by virtue of proviso to Rule 127 which reads thus--

127. Repeal and savings.--All rules corresponding to these rules in force in any region of the State of Madhya Pradesh immediately before the commencement of these rules are hereby repealed:

Provided that anything done or any action taken under the rules so repealed shall be deemed to have been done or taken under the corresponding provisions of these rules.

At the first blush these arguments do seem to support the contention of the learned counsel for the petitioner. But there is a reason why we do not agree with this argument.

In 1972 Rules there are IX Chapters intituled as indicated hereinbelow against each chapter.

Chapter I. Preliminary.
Chapter II. No Objection Certificate.
Chapter III. Building.
Chapter IV. Electric Installation.
Chapter V. Precautions Against Fire.
Chapter VI. Permission for building a cinema.
Chapter VII. Licence.
Chapter VIII. General.
Chapter IX. Suspension and Cancellation of Licences. Limitation for appeals and application for exemption.

It may be mentioned that in Chapters I, VIII and IX there is no reference to any particular category of cinema. In Chapter II there is a reference to the two categories permanent and touring. In Chapter III--Building, there is a distinct reference to the three categories of cinemas-permanent, quasi-permanent and touring inasmuch as in proviso to Rule 7, it is mentioned that Rules 8, 12, 13, 14, 15, 16, 19(1), 19(2), 20, 21 and 22 only shall apply in the case of touring cinemas; then in rule 8 (2) it is said. "In the case of touring cinemas, the external walls of the auditorium shall be constructed of fire resisting material. Such cinemas may not have roof over the auditorium"; and in Rule 20 (1) it is said-- "Subject to sub-rule (3), there shall be provided in each permanent and quasi-permanent cinema an independent permanent enclosure of sufficient dimensions to allow the operator to work freely. The enclosure shall be substantially constructed of fire-resisting material or be lined with such material." Chapter IV--"Electric Installation" makes no reference to distinct categories of cinemas. In Chapter V--Precautions Against Fire--there is a reference to all the three categories of cinemas inasmuch as rule 73 says--"In every permanent or quasi-permanent cinema there shall be provided on the top of the proscenium wall or in some other place to be approved by the Executive Engineer/Sub-Divisional Officer concerned two cisterns (connected with fire service in the cinema) which shall be kept always filled with water. Each of the cisterns shall be capable of containing at least 250 gallons of water for every 100 individuals of the public to be accommodated in the cinema. These cisterns shall be

fitted with an outside indicator suitably placed so as to show clearly the depth of water therein and the water shall be kept clean and free from sediment and covered over with properly fitting covers so as to be mosquito proof. The cisterns shall be cleaned once every year : provided that nothing in this rule shall apply to touring cinemas and to premises duly licensed for use for cinematograph exhibition before the coming into force of those rules if such premises are situated in places where there is sufficient municipal water supply which can be used for the purpose of extinguishing fire.

Chapter VI--''Permission for Building a Cinema'' does not make reference to distinct categories of cinemas except that in rule 98 it says-- "The provisions of this Chapter shall not apply to touring cinemas". Chapter VII also distinctly refers to three categories. In Rule 106 distinct fees for these categories are prescribed and the proviso to rule 101 reads as under:

101. Grant of cinema licence--

xxx xxx xxx

Provided that a touring cinema licence shall not be beyond the district of issue and ordinarily touring cinema licences shall not be granted for places where there is already a permanent or a quasi-permanent cinema, but the licensing authority may in its discretion permit a touring cinema to operate at a place where there is already a permanent or quasi-permanent cinema on occasions such as fairs and melas or when the touring cinema exhibits films of a kind different from those exhibited by non-touring cinemas such as, educational films or where it caters for a different public.

It may be mentioned that in the aforesaid Chapters wherever a particular rule or rules are not to apply to existing cinemas it is so specifically provided. Had the 1972 Rules not envisaged establishment of "quasi-permanent cinemas" and only contemplated the continuance of already existing quasi-permanent cinemas, there was no purpose in referring to that category in the manner indicated hereinabove.

We are also conscious of the difficulty that when the Rules 3, 4, 5, 6 and the Rules relating to the building, do not specifically provide for a quasi-permanent cinema what should be the procedure for obtaining ''no objection certificate'' and the licence. This difficulty was also used as an argument in support of this contention that there is no provision in the 1972 Rules for establishing of ''quasi-permanent'' cinema by the learned counsel for the petitioner. It is true that the better course for the Government was to have made a specific provision in that regard in the Rules. But the omission of the Government in the matter does not preclude us in reaching a reasonable result in the construction of the various relevant provisions of 1972 Rules.

Lord Denning, in Seaford Court Estates Ltd. v. Asher 1949 (2) All. ER 155 observed as under:

Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to if and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the Legislature. That was clearly laid down (3 Co. Rep. 7b) by the resolution of the judges (SIR ROGER MANWOOD, C. B. and the other barons of the Exchequer) in Heydon''s case(4) and it is the safest guide today. Good practical advise on the subject was given about the same time by PLOWDEN in his note (2 Ploud 465) to Eyston v. Studd(5). Put into homely metaphor it is this: A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

20A. This view of Lord Denning has been adopted by the Supreme Court in M. Pentiah and Others Vs. Muddala Veeramallappa and Others, , Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, .

Lord Denning reiterated the aforesaid view in Lucy v. Henleys Telegraph Works 1969 (3) All E R 456.

I have said before, and I repeat it now, that we should so construe an Act of Parliament as to effectuate the intention of the makers of it, and not to defeat it. If they have by mistake overlooked something, we should do our best to smooth it out. We should construe it so as to avoid absurdities and incongruities, and to produce a consistent and just result.

In Nothmen v. London Borough of Barnet (1978) 1 All ER 1243 Lord Denning has observed--

The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the ''purposive'' approach. He said so in Kamminus Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd., and it was recommended by Sir Davi Renton and his colleagues in their valuable report entitled "The Preparation of Legislation". In all cases now in the interpretation of statutes we adopt such a construction as will promote the general legislative purpose underlying the provision. It is no longer necessary for the judges to wring their hands and say: "There is nothing we can do about it. Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it--by reading words in, if necessary--so as to do what Parliament would have done had they had the situation in mind.

See further the discussion in the book "2 The Discipline of Law" by the Rt. Hon. Lord Denning Master of the Rolls, pages 11 to 17 under the caption--"Ironing out the creases."

22-A. We should be guided by the aforesaid rules of construction as also the meaning of quasi-permanent cinema while construing the relevant rules of the 1972 Rules to resolve the difficulty indicated hereinabove in paragraph 19 of this order.

In the Dictionary of English Law by Earl Jowitt, 1969 Edition at page 1486 the word ''quasi'' has been described to mean as under:

"Quasi--This word prefixed to a noun means that although the thing signified by the combination of "quasi" with the noun does not comply in strictness with the definition of the noun, it shares its qualities, falls under the same head, and is best marked by its amproximation thereto.

(Emphasis by us.)

Similar is the effect of prefixing a noun with word ''quasi'' given in "Whatton''s Law Lexicon" 14th Edition at page 829 which is extracted hereinbelow.

Quasi--This word prefixed to a noun means that although the thing signified by the combination of ''quasi'' with the noun does not comply in strictness with the definition of the noun, it shares its qualities, falls philosophically under the same head, and is best marked by its approximation thereto. The titles next following furnish examples.

It may be'' mentioned that in the combination "quasi-permanent cinema" the adjective ''permanent'' of the noun ''cinema'' has been prefixed with the word ''quasi'' but it makes no difference in the meaning. The meaning, therefore, of "quasi-permanent cinema" would mean that although it does not comply in strictness with the definition of permanent cinema, it shares its qualities, falls under that head and is best marked by its approximation thereto.

It cannot be gainsaid that a touring cinema is materially different from a quasi-permanent cinema. This, apart from the ordinary meaning of the word ''touring'' as compared to ''quasi-permanent'', can be called out from 1972 Rules themselves. In this respect explanation to Rule 5, proviso to Rule 101 and proviso to Rule 106 are significant. From the provisions contained in these Rules, it is obtainable that a touring cinema changes its camp from place to place within the district which certainly is not the case in respect of a ''quasi permanent cinema''.

We now proceed to consider various Rules of the 1972 Rules with reference to each Chapter.

27-A. In Chapter II which relates to the procedure for obtaining of no objection certificate with regard to the proposed site for the location of a cinema, the procedure with regard to permanent cinema or touring cinema is the same. Therefore, the procedure for obtaining ''no objection certificate'' in respect of a quasi permanent cinema would also be the same and in place of permanent cinema/touring cinema, quasi permanent cinema would be mentioned.

27-B. Chapter III relates to Building. The Rules contained in this Chapter are from number 7 to number 24. The very first Rule, that is, Rule 7 says "No cinema shall be licensed under these rules unless the cinema conforms to the rules laid down in this Chapter". This goes to show that cinema of every category must conform regarding the building to the provisions contained in this Chapter. In this Chapter proviso to Rule 7 as already indicated hereinabove in paragraph 17 of this order, provides that rules 8, 12, 13, 14, 15, 16, 19 (1), 19(2), 20, 21 and 22 only applies in the case of touring cinemas. Rule 8 bears the head-note "Structure to be fire proof". Sub-rule (2) of this Rule provides "In the case of touring cinemas, the external walls of the auditorium shall be constructed of fire-resisting material. Such cinemas may not have roof over the auditorium". Reading this exception with the opening provision in the body of Rule 7 extracted hereinabove, the irresistible conclusion is that the structure in respect of a permanent and quasi permanent cinema has to be in strict conformity with rule 8 (1). Rule 13 relates to seating arrangement. Sub-rule (7) of this rule provides "Nothing in sub-rule (2), (3), (5) and (b) shall apply to touring cinemas", which again for the parity of reasons indicated hereinabove, dealing with Rule 8, goes to show that seating arrangement in respect of permanent and quasi permanent cinema has to be made in conformity with Rule 13. Rule 15 contains provision with regard to doors. Sub-rule (2) of this rule provides "Nothing in sub-rule (2) shall apply to touring cinemas.....". Rule 19 deals with sanitary conveniences. Sub-rule (5) of this rule provides -- "Sub-rules (1) and (2) shall be applicable to touring cinemas subject to the condition that the construction of urinals and latrines shall be of temporary nature and shall be such as may be approved by the Executive Engineer/Sub-Divisional Officer, concerned and by the District Medical Officer of Health having jurisdiction over the area in which the cinema is situated". Rule 20--Enclosure for the Projectors--Sub-rule (1) of this Rule has already been extracted

hereinabove in paragraph 17 of this order, which provides as to how the enclosure of a quasi-permanent cinema should be. Sub-rule (4) of this Rule provides--"The enclosure shall be placed outside the cinema building and where such cinema consists of a temporary or quasi permanent structure the enclosure shall be at a distance of at least three feet from such structure. Where the Licensing authority is satisfied that any enclosure is fireproof and separated from the auditorium by a fire-proof wall or is of opinion that it is impracticable or in the circumstances unnecessary for securing safety that the enclosure should be outside the building or at a distance from the structure as the case may be he may by express words in the licence dispense with such requirements.

27-C. Chapter IV--Electric Installation--

As already indicated hereinabove in paragraph 17 of this order, this Chapter applies without distinction to every category of cinema.

27-D. Chapter V--Precautions Against Fire--

This Chapter consists of Rule 73 to Rule 86. Rule 73 extracted hereinabove, in paragraph 17 of this order goes to show the type of precaution that has to be taken in respect of a permanent or quasi-permanent cinema which is not required in the case of touring cinema. Rule 75 relates to providing of fire buckets. Proviso to Rule 75 (1) provides for a different type of fire buckets in respect of touring cinema. Rule 76 provides for Chemical Extinguishers..... Proviso to sub-rule (1) of this Rule provides that nothing in this rule shall apply to touring cinemas which goes to show that it shall apply to permanent and quasi-permanent cinemas. Rule 78 provides for Exit signs. Sub-rule (4) of this Rule provides--"Nothing in this rule shall apply to touring cinemas", which goes to show that it shall apply to permanent and quasi-permanent cinemas.

27-E. Chapter VI--Permission for Building a Cinema.

This Chapter consists of Rule number 87 to Rule number 98. Rule 87 which bears the head note "Permission for building" provides--"No person shall put up any building or structure or convert existing premises for being used as a cinema except with the previous permission in writing of the licensing authority". A plain reading of this Rule makes it transparently clear that without exception building permission in writing of the Licensing Authority is necessary. The subsequent Rules provide the procedure for obtaining such permission and Rule 98, already extracted hereinabove in paragraph 17 of this order, exempts touring cinema from the operation of this Chapter.

27-F. Chapter VII makes no distinction with regard to the category of cinema except the one indicated in proviso to section 101, already extracted hereinabove in paragraph 17 of this order. Rule 106 (1) (b) provides the same fees for a quasi-permanent cinema and touring cinema except that the proviso to this Rule

provides that in the case of touring cinema which changes its camp within two months from the date on which it was made the licence fee for the subsequent camp shall be at half rates mentioned in clause (b).

27-G. Chapter VIII and Chapter IX apply without distinction to every category of cinema.

The upshot of the foregoing discussion is that the Legislature, the rule making authority (the State Government) intended to apply all those rules to quasi-permanent cinemas which apply in respect of permanent cinemas except where any specific provision with regard to quasi-permanent cinema is made, obviously for the reason that as indicated hereinabove in paragraph 5 of this order, the quasi-permanent cinema though not strictly permanent is very much near to a permanent cinema. This intention of the Legislature is more obvious from the fact that as indicated hereinabove in the preceding paragraph, wherever an exclusion from the operation of a particular Rule is provided, it is in respect of a touring cinema. We have held that 1972 Rules apply to cinemas, permanent, quasi-permanent and touring, and, therefore, in the Rules wherever exclusion is made in respect of touring cinema, the natural corollary is that that rule applies to permanent and quasi-permanent cinemas.

For the foregoing reasons, contention No. (i) raised by the learned counsel for the petitioner has to be repelled and is accordingly repelled.

Contention No. (ii) (a).

We now turn to consideration of contention No. (ii) (a).

It is an admitted position that notice as required under Rule 3 (2) of the 1972 Rules was displayed at the proposed site but it was not maintained on the site until the matter of the no objection certificate was decided by the Licensing Authority. The explanation given in the return of the respondents is that it was carried away by storm. The main object behind the exhibition of the notice at the proposed site is to let know the people at large that a cinema is proposed to be located at the place so as to enable persons to put in their objection, if any. It is not disputed that notice inviting objection was published in accordance with Rule 4. The petitioner had put in his objection. The petitioner is, therefore, not, in any manner, prejudiced. Therefore, in the facts and circumstances of the instant case, the non-maintenance of the exhibition of the notice at the proposed site is not a valid ground for vitiating the ''no objection certificate''.

Contention No. (ii) (b).

We now come to contention No. (ii) (b).

It is undisputed that in the map accompanying the application for ''no objection certificate'' the existence of the hospital within a distance of 200 metres of the

proposed site was not shown. The relevant rule in this connection is Rule 3 (3). The rule so far relevant is extracted hereinbelow.

.....The application shall be accompanied by a plan of the proposed site drawn to scale and shall clearly indicate the surrounding roads and buildings which exist upto a distance of 200 metres of the proposed site. Schools, hospitals, temples or other like places should be clearly indicated in the plan.

Obviously the object behind the furnishing of the aforesaid information is to enable the concerned authorities to examine the suitability of the site Jest it be a nuisance, particularly to the type of institutions specifically stated therein by way of illustration. This rule cannot be interpreted to mean that the existence of a school, temple, hospital or other like places within 200 metres of the proposed site ipso facto bars the location of a cinema on the proposed site and leaves no discretion with the concerned authorities. This view is in line with a Division Bench decision of this Court in Shri Saravgi Digambar Jain Panchan Bajar Ka Mandir and another v. State of M.P. and others Misc. Petition No. 63 of 1976 decided on 24-4-1979. It cannot be disputed that the fact of the existence of the hospital within 200 metres of the proposed site was very much before the concerned authorities which they did take into account prior to the grant of ''no objection certificate''. It is so evidenced from the discussion in paragraph 5 of the order of respondent No. 2 exhibited as Annexure H so also from the order dated 4-3-1980 of the State Government, which we shall just be extracting hereinafter while dealing with contention No. (iii) and (iv) from the record of the State Government (C. F. No. 9759/2A (3)) which is produced for our perusal by the learned Government Advocate. In this view of the matter, we do not find contention No. (ii) (b) worthy of acceptance.
Contention No. (iii) and (iv)

We now turn to consideration of contention No. (iii) and (iv). These contentions being inter linked, we propose to deal with them as a package.

Learned counsel for the petitioner very vehemently contended that location of a cinema at a particular place in a town is a matter of concern for the inhabitants of that town from the point of view of nuisance and safety etc.; therefore, it is imperative for the State Government to give a hearing including personal hearing to that person at least who had raised an objection before the Licensing Authority. Learned counsel placed reliance in support of his argument on a decision of the Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, . Learned counsel had further contended that the State Government without applying mind mechanically accorded permission for the grant of ''no objection certificate''.

Chapter II of the Rules do not provide for personal hearing either by the Licensing Authority or by the State Government; but in the instant case, admittedly the Licensing Authority, had, before sending its recommendation to the State Government, given personal hearing to the petitioner. We further find from the

order dated 4-3-1980 of the State Government (C. F. No. 9759/2A (3), that the State Government not only considered the objections of the petitioner that were filed before the Licensing Authority but the further objection filed before the State Government. We extract hereinbelow this order of the State Government.

The extracted order speaks out that it was passed after due application of mind.

In Mohd. Ibrahim Khan v. State of M.P. (Supra) the Supreme Court has negatived the contention of personal hearing. The relevant excerpt is as under:

When an application for no objection certificate is made, objections have to be invited in the prescribed manner. There can conceivably be hundreds of objections. There is no question of then giving a personal hearing to each objector.

33-A. In the light of the foregoing discussion we are of the opinion that neither principles of natural justice have been violated nor the State Government accepted the recommendation of the Licensing Authority without applying the mind. Rule 5 only provides for consideration of objections; that does not imply personal hearing. See Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), . The decision in S. L. Kapur''s Case (Supra) also does not lay down that in all matters resulting in civil consequences, personal hearing is a must, otherwise it would be violation of Rules of Natural Justice.

For the foregoing reasons contentions No. (iii) and (iv) raised by the learned counsel for the petitioner are also rejected.

Contention No. (v)

We now turn to contention No. (v): The object in imposing a restriction on exhibition by means of cinematograph at any place other than a licensed place under the Act in compliance with the restriction of conditions imposed by such licence by virtue of section 3 in the Act obviously is in the interest of safety, convenience, morality and welfare of the public. It is with that end in object that 1972 Rules have also been framed u/s 9 of the Act. To iterate, Rule 7 in Chapter III--Building "no cinema shall be licensed under these Rules unless the cinema conforms to the rules laid down in this Chapter", is an imperative term. We have already in paragraphs 27B and 28 of this order held that rules in this Chapter apply to quasi-permanent cinema. We have also held in paragraphs 27E and 28 of this order that Chapter VI--Permission for building a cinema, in view of the fact that as Rule 98 in this Chapter engrafts exception only in respect of touring cinema, the Chapter applies to permanent cinema. It is in this backdrop that we proceed to consider contention No. (v).

It is an admitted position that no permission for building in respect of quasi-permanent cinema in question has been obtained by respondent No. 1; naturally, therefore, the application for licence was not accompanied by such permission. It is also of significant relevance that it is not averred that subsequently even such a permission has been obtained. It is also not pleaded on behalf of the

respondents that though permission was not obtained, but the plan of building/structure for the cinema in question was placed before the Licensing Authority.

Rule 101 so far relevant reads as under:

The licensing authority on receipt of documents and certificate referred to in rule 100 being satisfied that all the necessary rules have been complied with may grant a licence for a cinema to the applicant on such terms and conditions and subject to such restrictions as the licensing authority may determine. The cinema licence shall be in Form "E".

(Italics by us)

The italics portion indicates that it is imperative for the Licensing Authority to be satisfied before the grant of licence, that all necessary rules have been complied with. The Licensing Authority cannot act arbitrarily so as to over-ride this rule, absolute discretion of the Licensing Authority does not invest the authority to act with arbitrary power so as to destroy the limitations to which it is subject to. In the light of the facts stated in the preceding paragraph the irresistible conclusion is that respondent No. 2, the Licensing Authority acted arbitrarily and in utter disregard of Rules 100 and 101 of the 1972 Rules.

It would be pertinent at this stage to set out Rule 6 and Rule 102 of the 1972 Rules herein below:

6. Grant and validity of no objection certificate.--(1) Without prejudice to the right of the licensing authority to refuse or to grant a cinema licence under rules 101 and 102 the licensing authority may, with the previous permission of the Government, grant a certificate to the applicant that there is no objection to the location of the cinema at the site notified by the applicant under rule 3.

(2) The no objection certificate shall.....be in form D and shall be valid for a period of two years from the date of issue in the case of permanent cinemas, and six months in the case of touring cinemas.

Explanation--The licensing authority may, on an application being made to it in this behalf, dispense with the procedure in rules 3 and 4 in respect of the camp sites of a touring cinema other than the first camp sites, if in respect of such camp sites any touring cinema has been allowed to camp there on a previous occasion.

Power to refuse licence.--The licensing authority shall have absolute discretion in refusing a cinema licence if the cinema appears to it likely to cause obstruction, inconvenience, annoyance, risk, danger or damage to residents, or passers-by in the vicinity of the cinema.

Rule 6 clearly provides that grant of no objection certificate does not affect, in any manner, the right of the Licensing Authority in the matter of grant of licence under

Rules 101 and 102. Rule 101 we have already dealt with. Rule 102 extracted hereinabove, reinforces what we have said above in paragraph 35 above that the control or restriction in the matter of exhibition by means of a cinematograph is in the interest of safety, convenience, morality and welfare of the public. In other words these conditions must be supreme in the mind of the authority exercising discretion in the matter of grant of licence. It cannot be gainsaid that the type of building/structure is a significant item to be taken note of in the matter of safety of the public. When the Licensing Authority did not absolutely consider the aspect of the matter, the licence in question, granted cannot be allowed to stand.

The argument of the learned counsel for the respondents was that no permission for building is necessary in case of quasi-permanent cinema, as it is a temporary cinema, and, therefore, should be at par with touring cinema. We have already discussed and held above that Chapter VI applies to a quasi permanent cinemas. The argument of the learned counsel for the respondents is not worthy of acceptance.

The learned counsel for the respondents had argued that the petitioner has no locus standi. The petitioner, who is the son of the owner of an existing cinema at Barwah has filed the petition with a mala fide intention to maintain his monopolistic commercial interest and avoid a competitor/rival in the field. The learned counsel for the respondents sought support from the decision of the Supreme Court in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, . In our opinion from the discussion in paragraph 43 of this judgment, it is deducible that a person who lodges an objection with the District Magistrate to the grant of ''no objection certificate'' has a locus standi to file a petition under Article 226 of the Constitution. This is what has been specifically observed in Mohd. Ibrahim Khan''s case (Supra). The relevant observation reads thus--

If after taking into consideration the objections a no-objection certificate is granted, there ends the matter subject, of course, to any properly constituted legal proceedings, conceivably a writ petition under Article 226.

It may be mentioned that J. M. Desai''s case (Supra) has been referred to and considered in Mohd. Ibrahim Khan''s Case (Supra). In this view of the matter, we are not persuaded to accept the argument of the learned counsel for the respondents that the petitioner has no locus standi to file the present petition.

In the light of the foregoing discussion the grant of no objection certificate to respondent No. 1 is held to be valid, but not--the grant of licence. The licence dated 7-4-1980 (Annexure K) has to be quashed.

In the result the petition is partially allowed. The licence dated 7-4-1980 (Annexure K) granted to respondent No. 1 is hereby quashed. We, however, make no order as to costs. The outstanding amount of security, if any, shall be refunded to the petitioner.